



6560-50

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA-R03-RCRA-2013-0571; FRL-9903-08-Region 3]

West Virginia: Final Authorization of State Hazardous Waste Management Program

Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: West Virginia has applied to EPA for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these revisions satisfy all requirements needed to qualify for final authorization and is authorizing West Virginia's revisions through this immediate final action. EPA is publishing this rule to authorize the revisions without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we receive written comments that oppose this authorization during the comment period, the decision to authorize West Virginia's revisions to its hazardous waste program will take effect. If we receive comments that oppose this action we will publish a document in the **Federal Register**

withdrawing the relevant portions of this rule, before they take effect, and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize revisions to West Virginia's program that were the subject of adverse comments.

DATES: This final authorization will become effective on *[insert date 60 days after the date of publication in the Federal Register]*, unless EPA receives adverse written comments by *[insert date 30 days after the date of publication in the Federal Register]*. If EPA receives any such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect as scheduled.

ADDRESSES: Submit your comments, identified by Docket ID No. **EPA-R03-RCRA-2013-0571**, by one of the following methods:

1. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
2. E-mail: pratt.stacie@epa.gov
3. Mail: Stacie Pratt, Mailcode 3LC50, Office of State Programs, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029.
4. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

You may inspect and copy West Virginia's application from 8:00 a.m. to 4:30 p.m., Monday through Friday at the following locations: West Virginia Department of Environmental Protection, (WVDEP), Division of Water and Waste Management, 601 57th Street, SE,

Charleston, WV 25304, Phone number: (304) 926-0499, attn: Yogesh Patel; and EPA Region III Library, 2nd Floor, 1650 Arch Street, Philadelphia, PA 19103-2029, Phone number: (215) 814-5254.

Instructions: Direct your comments to Docket ID No. **EPA-R03-RCRA-2013-0571**.

EPA's policy is that all comments received will be included in the public file without change and may be made available on line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The Federal <http://www.regulations.gov> Web site is an “anonymous access” system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public file and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption, and be free of any defects or viruses.

FOR FURTHER INFORMATION CONTACT: Stacie Pratt, Mailcode 3LC50, Office of State

Programs, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029, Phone number: (215) 814-5173; e-mail address: pratt.stacie@epa.gov

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States that have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program is revised to become more stringent or broader in scope, States must revise their programs and apply to EPA to authorize the revisions. Authorization of revisions to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other revisions occur. Most commonly, States must revise their programs because of revisions to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

EPA concludes that West Virginia's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant West Virginia final authorization to operate its hazardous waste program with the revisions described in its application for program revisions, subject to the procedures described in section E, below. West Virginia has responsibility for permitting treatment, storage, and disposal facilities

(TSDFs) within its borders and for carrying out the aspects of the RCRA program described in its application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those HSWA requirements and prohibitions for which West Virginia has not been authorized, including issuing HSWA permits, until the State is granted authorization to do so.

C. What Is the Effect of This Authorization Decision?

This decision serves to authorize revisions to West Virginia's authorized hazardous waste program. This action does not impose additional requirements on the regulated community because the regulations for which West Virginia is being authorized by this action are already effective and are not changed by this action. West Virginia has enforcement responsibilities under its state hazardous waste program for violations of its program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Perform inspections, and require monitoring, tests, analyses or reports;
- Enforce RCRA requirements and suspend or revoke permits; and
- Take enforcement actions regardless of whether West Virginia has taken its own actions.

D. Why Wasn't There a Proposed Rule Before This Rule?

EPA did not publish a proposal before this rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's Federal Register we are publishing a separate document that proposes to authorize West Virginia's program revisions. If EPA receives comments that oppose this authorization, that document will serve as a proposal to authorize the revisions to West Virginia's program that were the subject of adverse comment.

E. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule would become effective. EPA will base any further decision on the authorization of West Virginia's program revisions on the proposal mentioned in the previous section. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time. If we receive comments that oppose the authorization of a particular revision to West Virginia's hazardous waste program, we will withdraw that part of this rule, but the authorization of the program revisions that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What Has West Virginia Previously Been Authorized for?

Initially, West Virginia received final authorization to implement its hazardous waste management program effective May 29, 1986 (51 FR 17739). EPA granted authorization for revisions to West Virginia's regulatory program on May 10, 2000, effective July 10, 2000 (65 FR 29973) and October 16, 2003, effective December 15, 2003 (68 FR 59542).

G. What Revisions Are We Authorizing With This Action?

On May 1, 2013, West Virginia submitted a final complete program revision application, seeking authorization of additional revisions to its program in accordance with 40 CFR 271.21. West Virginia's revision application includes: (1) various regulations that are equivalent to, and no less stringent than, revisions to the Federal hazardous waste program, as published in the Code of Federal Regulations as of June 16, 2010, and (2) a request for EPA's approval of the State's use of the cleanup standards in its Voluntary Remediation Program (VRP) at RCRA corrective action sites.

We now make an immediate final decision, subject to receipt of written comments that oppose this action, that West Virginia's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Therefore, EPA grants West Virginia's final authorization for the following program revisions:

1. Program Revision Changes for Federal Rules

West Virginia seeks authority to administer the Federal requirements that are listed in Table 1. This Table lists the West Virginia analogs that are being recognized as no less stringent than the analogous Federal requirements. West Virginia's regulatory references are to the West Virginia Code of State Regulations, Title 33, Series 20 "Hazardous Waste Management System" (33 CSR 20), effective June 16, 2011; and Title 45, Series 25 "Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities" (45 CSR 25), effective June 16, 2011. West Virginia's application also includes a revised Program Description and Memorandum of Agreement, which explain the reorganization of the State agencies responsible for implementing the hazardous waste program, as well as the procedures that will be followed when the VRP cleanup standards are used at RCRA corrective action sites.

West Virginia is also seeking authorization for certain State-initiated changes that are not directly related to any of the Revision Checklists listed in Table 1. These State-initiated changes are related to the adoption and renumbering of provisions intended to improve the clarity of the State's regulations and to provide for necessary conforming changes as a result of changes in State agencies or in Federal amendments that do not apply to West Virginia. State regulatory provisions that have been renumbered since the 2003 authorization are listed in Table 2.

The State's statutory authority for the hazardous waste program for which it is seeking authorization is based on the following provisions from the West Virginia Code, as amended through 2010: Chapter 22, Article 18, Hazardous Waste Management Act; Chapter 22, Article 1, Department of Environmental Protection, Sections 22-1-3a, 22-1-3(c), 22-1-6(c), and 22-1-6(d)(8); Chapter 22, Article 5, Air Pollution Control, Section 22-5-1 and Chapter 22, Article 12,

Groundwater Protection Act, Section 22-12-4. West Virginia's authority to incorporate the Federal program is found at W. Va. Code, Section 22-1-3(c).

Table 1. West Virginia's Analogs to the Federal Requirements

Description of Federal Requirement (Revision Checklists¹)	Federal Register	Analogous West Virginia Authority
RCRA Cluster VIII		
Clarification of Standards for Hazardous Waste LDR Treatment Variances, Revision Checklist 162	62 FR 64504, 12/5/97	33 CSR 20, section 33-20-10.2. (At 33-20-10.2, West Virginia excludes 40 CFR 268.44 from the incorporation by reference of its Federal regulations. See Section H.1.a for discussion about Federal non-delegable provisions.)
RCRA Cluster X		
Universal Waste Rule: Specific Provisions for Hazardous Waste Lamps, Revision Checklist 181	64 FR 36466, July 6, 1999	33 CSR 20, sections 33-20-2.1, 33-20-2.5.d, 33-20-3.1, 33-20-7.2, 33-20-8.1, 33-20-10.1, 33-20-11.1, 33-20-13.1, 33-20-13.4.
Land Disposal Restrictions Phase IV -- Technical Corrections, Revision Checklist 183	64 FR 56469, 10/20/99	33 CSR 20, sections 33-20-3.1, 33-20-5.1, 33-20-10.1.
Organobromine Production Wastes Vacatur, Revision Checklist 185	65 FR 14472, 3/17/00	33 CSR 20, sections 33-20-3.1, 33-20-10.1.
Petroleum Refining Process Wastes – Clarification, Revision Checklist 187	65 FR 36365, 6/8/00	33 CSR 20, sections 33-20-3.1, 33-20-10.1.
RCRA Cluster XI		
NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors, Revision Checklist 188	65 FR 42292, 07/10/00; as amended 66 FR 24270, 5/14/01; and 66 FR 35087, 7/03/01	33 CSR 20, sections 33-20-3.1, 33-20-7.2, 33-20-11.1; 45 CSR 25, sections 45-25-1.1.a, 45-25-1.5.a/Table 25-A, Item 1, 2, 22.

Description of Federal Requirement (Revision Checklists¹)	Federal Register	Analogous West Virginia Authority
Chlorinated Aliphatics Listing and LDRs for Newly Identified Wastes, Revision Checklist 189	65 FR 67068, 11/8/00	33 CSR 20, sections 33-20-3.1, 33-20-10.1.
Land Disposal Restrictions Phase IV -- Deferral for PCBs in Soil, Revision Checklist 190	65 FR 81373, 12/26/00	33 CSR 20, section 33-20-10.1.
Storage, Treatment, Transportation and Disposal of Mixed Waste, Revision Checklist 191	66 FR 27218, 5/16/01	33 CSR 20, section 33-20-9.1.
Mixture and Derived-From Rules Revisions, Revision Checklist 192A	66 FR 27266, 5/16/01	33 CSR 20, sections 33-20-3.1, 33-20-3.1.a.
Land Disposal Restrictions Correction, Revision Checklist 192B	66 FR 27266, 5/16/01	33 CSR 20, section 33-20-10.1.
Change of Official EPA Mailing Address, Revision Checklist 193	66 FR 34374, 6/28/01	33 CSR 20, section 33-20-2.1.
RCRA Cluster XII		
Mixture and Derived-From Rules Revision II, Revision Checklist 194	66 FR 50332, 10/3/01; as amended 66 FR 60153, 12/3/01	33 CSR 20, sections 33-20-3.1, 33-20-3.1.a.
Inorganic Chemical Manufacturing, Revision Checklist 195	66 FR 58258, 11/20/01; as amended, 67 FR 17119, 04/09/02	33 CSR 20, sections 33-20-3.1, 33-20-10.1.
CAMU Amendments, Revision Checklist 196	67 FR 2962, 1/22/02;	33 CSR 20, sections 33-20-2.1, 33-20-7.2.
Hazardous Air Pollutant Standards for Combustors: Interim Standards, Revision Checklist 197	67 FR 6792, 2/13/02	33 CSR 20, sections 33-20-7.2, 33-20-8.1, 33-20-9.1, 33-20-11.1; 45 CSR 25, sections 45-25-1.1.a 45-25-1.5.a/Table 25-A, Items 1, 2, 3, 15, 16, 17 and 27.

Description of Federal Requirement (Revision Checklists¹)	Federal Register	Analogous West Virginia Authority
Hazardous Air Pollutant Standards for Combustors: Corrections, Revision Checklist 198	67 FR 6968, 2/14/02	33 CSR 20, sections 33-20-9.1, 33-20-11.1; 45 CSR 25, sections 45-25-1.1.a, 45-25-1.5.a/Table 25-A, Items 2 and 15.
Vacatur of Mineral Processing Spent Materials Being Reclaimed as Solid Wastes and TCLP Use with MGP Waste, Revision Checklist 199	67 FR 11251, 3/13/02	33 CSR 20, section 33-20-3.1.
RCRA Cluster XIII		
Zinc Fertilizers Made from Recycled Hazardous Secondary Materials, Revision Checklist 200	67 FR 48393, 7/24/02	33 CSR 20, sections 33-20-3.1, 33-20-9.1, 33-20-10.1
National Treatment Variance for Radioactively Contaminated Batteries, Revision Checklist 201	67 FR 62618, 10/07/02	33 CSR 20, section 33-20-10.1.
NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors-Corrections, Revision Checklist 202	67 FR 77687, 12/19/02	33 CSR 20, sections 33-20-11.1; 45 CSR 25, sections 45-25-1.1.a, 45-25-1.5.a/Table 25-A, Items 2, 3, 16 and 17.
RCRA Cluster XIV		
Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards, Revision Checklist 203	68 FR 44659, 7/30/03	33 CSR 20, sections 33-20-3.1, 33-20-14.1.
NESHAP: Surface Coating of Automobiles and Light-Duty Trucks, Revision Checklist 205	69 FR 22601, 4/26/04	45 CSR 25, sections 45-25-1.1.a, 45-25-1.5.a/Table 25-A, Item 9.

Description of Federal Requirement (Revision Checklists¹)	Federal Register	Analogous West Virginia Authority
RCRA Cluster XV		
Nonwastewaters from Productions of Dyes, Pigments, and Food, Drug, and Cosmetic Colorants, Revision Checklist 206	70 FR 9138, 2/24/05; as amended 70 FR 35032, 6/16/05	33 CSR 20, sections 33-20-3.1, 33-20-10.1.
Testing and Monitoring Activities: Methods Innovation Rule and SW-846 Update IIIB, Revision Checklist 208	70 FR 34538, 6/14/05; as amended 70 FR 44150, 8/01/05	33 CSR 20, sections 33-20-2.1, 33-20-2.3, 33-20-3.1, 33-20-7.2, 33-20-8.1, 33-20-9.1, 33-20-10.1, 33-20-11.1, 33-20-14.1; 45 CSR 25, sections 45-25-1.1.a, 45-25-1.5.a/Table 25-A, Items 2, 3, 7, 9, 11, 15, 16, 17 and 19.
RCRA Cluster XVI		
Mercury-Containing Equipment, Revision Checklist 209	70 FR 45508, 8/05/05	33 CSR 20, sections 33-20-2.1, 33-20-3.1, 33-20-7.2, 33-20-8.1, 33-20-10.1, 33-20-11.1, 33-20-13.1.
Revision of Wastewater Treatment Exemptions for Hazardous Waste Mixtures, Revision Checklist 211	70 FR 57769, 10/04/05	33 CSR 20, sections 33-20-3.1, 33-20-3.1.a.
National Emission Standards for Hazardous Air Pollutants: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors, Revision Checklist 212	70 FR 59401, 10/12/05	33 CSR 20, sections 33-20-2.1, 33-20-7.2, 33-20-8.1, 33-20-9.1, 33-20-11.1; 45 CSR 25, sections 45-25-1.1.a, 45-25-1.5.a/Table 25-A, Items 1, 2, 3, 8, 10, 15, 16, 17, 24 and 27.

Description of Federal Requirement (Revision Checklists¹)	Federal Register	Analogous West Virginia Authority
Burden Reduction Initiative, Revision Checklist 213	71 FR 16862, 4/04/06	33 CSR 20, sections 33-20-2.1*, 33-20-3.1, 33-20-7.2, 33-20-7.4.c , 33-20-8.1, 33-20-9.1, 33-20-10.1, 33-20-11.1; 45 CSR 25, sections 45-25-1.1.a, 45-25-1.5.a/Table 25-A, Items 1, 9 and 15. * West Virginia incorporates by reference 40 CFR part 260 at 33-20-2.1, however, the state is not being authorized for the definition of “Performance Track member facility”, see section H.1.d for discussion.
RCRA Cluster XVII		
Corrections to Errors in the Code of Federal Regulations, Revision Checklist 214	71 FR 40254, 7/14/06	33 CSR 20, sections 33-20-2.1, 33-20-3.1, 33-20-5.1, 33-20-5.4, 33-20-5.5, 33-20-7.2, 33-20-7.4, 33-20-7.5, 33-20-7.6, 33-20-7.7, 33-20-8.1, 33-20-8.2, 33-20-8.5, 33-20-9.1, 33-20-10.1, 33-20-10.2, 33-20-11.1, 33-20-13.1, 33-20-14.1; 45 CSR 25, sections 45-25-1.1.a, 45-25-1.5.a/Table 25-A, Items 1, 5, 7, 9, 11, 15 and 19.
Cathode Ray Tubes Rule, Revision Checklist 215	71 FR 42928, 7/28/06	33 CSR 20, sections 33-20-1.5.a, 33-20-2.1, 33-20-3.1; 45 CSR 25, sections 45-25-1.1.a, 45-25-1.5.a/Table 25-A, Item 22.
RCRA Cluster XVIII		
Exclusion of Oil-Bearing Secondary Materials Processed in a Gasification System to Produce Synthesis Gas, Revision Checklist 216	73 FR 57, 1/02/08	33 CSR 20, sections 33-20-2.1, 33-20-3.1.

Description of Federal Requirement (Revision Checklists¹)	Federal Register	Analogous West Virginia Authority
NESHAP: Final Standards for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II) Amendments, Revision Checklist 217	73 FR 18970, 4/08/08	33 CSR 20, sections 33-20-7.2, 33-20-9.1; 45 CSR 25, sections 45-25-1.1.a, 45-25-1.5.a/Table 25-A, Items 1 and 15.
F019 Exemption for Wastewater Treatment Sludges from Auto Manufacturing Zinc Phosphating Processes, Revision Checklist 218	73 FR 31756, 6/04/08	33 CSR 20, sections 33-20-3.1
RCRA Cluster XIX		
Academic Laboratories Generator Standards, Revision Checklist 220	73 FR 72912, 12/1/08	33 CSR 20, sections 33-20-3.1, 33-20-5.1.
Expansion of RCRA Comparable Fuel Exclusion, Revision Checklist 221	73 FR 77954, 12/19/08	33 CSR 20, sections 33-20-3.1; 45 CSR 25, sections 45-25-1.1.a, 45-25-1.5.a/Table 25-A, Items 21 and 22.
RCRA Cluster XX		
OECD Requirements; Export Shipments of Spent Lead-Acid Batteries, Revision Checklist 222	75 FR 1236, 1/08/10	33 CSR 20, sections 33-20-1.5.a, 33-20-5.1, 33-20-5.4, 33-20-5.5, 33-20-6.1, 33-20-6.2, 33-20-7.2, 33-20-7.3, 33-20-8.1, 33-20-8.2, 33-20-9.1.
Hazardous Waste Technical Corrections and Clarifications, Revision Checklist 223	75 FR 12989, 3/18/10	33 CSR 20, sections 33-20-2.1, 33-20-3.1, 33-20-5.1, 33-20-5.3, 33-20-6.1, 33-20-6.2, 33-20-7.2, 33-20-8.1, 33-20-9.1, 33-20-10.1, 33-20-11.1; 45 CSR 25, sections 45-25-1.1.a, 45-25-1.5.a/Table 25-A, Items 15, 20, 21 and 23.
Withdrawal of the Emission Comparable Fuel Exclusion under RCRA, Revision Checklist 224	75 FR 33712, 6/15/10	33 CSR 20, sections 33-20-3.1; 45 CSR 25, sections 45-25-1.1.a, 45-25-1.5.a/Table 25-A, Items 20 and 22.

¹ A Revision Checklist is a document that addresses the specific revisions made to the Federal regulations by one or more related final rules published in the Federal Register. EPA develops these checklists as tools to assist States in developing their authorization applications and in documenting specific State analogs to the Federal Regulations. For

more information see EPA's RCRA State Authorization web page at <http://www.epa.gov/osw/laws-regs/state/index.htm>.

2. State-Initiated Changes

West Virginia has amended its regulations by adopting and renumbering provisions intended to improve the clarity of the State's regulations and to provide for necessary conforming changes as a result of changes in State terms and agencies, or Federal amendments that do not apply to West Virginia. In addition, 33-20-5.5 as found in the July 1, 2001 regulations was removed. This provision specifically incorporated by reference the March 8, 2000 federal final rule addressed by Revision Checklist 184 and was necessary because at the time, West Virginia incorporated by reference 40 CFR as of July 1, 1999. The provision is no longer necessary because West Virginia now incorporates by reference 40 CFR as of June 16, 2010. EPA has evaluated the changes and has determined that the State's regulations remain consistent with, and are no less stringent than, the corresponding Federal regulations. Table 2 lists those State regulatory provisions that have been renumbered since the 2003 authorization.

Table 2. Redesignated Provisions in West Virginia's Hazardous Waste Regulations

State Citation as Found in 33CSR20, effective July 1, 2001	State Citation as Found in 33CSR20, effective June 16, 2011
33-20-5.3	33-20-5.4
33-20-5.4	33-20-5.5
33-20-7.4 through 33-20.7.8	33-20-7.3 through 33-20.7.7
33-20-8.3 through 33-20.8.6	33-20-8.2 through 33-20.8.5
33-20-10.3	33-20-10.2
33-20-10.5	33-20-10.3
33-20-11.3 through 11.22	33-20-11.2 through 11.21
33-20-13.4 through 13.6	33-20-13.2 through 13.4

3. The West Virginia Voluntary Remediation Program as it Relates to the State's RCRA Corrective Action program.

On December 15, 2003, EPA approved the State's application for revision of the State authorized Hazardous Waste Program. The 2003 approval included, among other things, the authority for the State to implement corrective action at hazardous waste sites. EPA's authorization of the State's Corrective Action Program related to corrective action permitting responsibilities under RCRA sections 3004(u) and (v). West Virginia is now seeking approval to utilize, at RCRA corrective action sites, the cleanup standards in its Voluntary Remediation Program (VRP), as set forth in its Voluntary Remediation and Redevelopment Act (Chapter 22, Article 22 of the West Virginia Code) and its implementing regulations in Title 60, Series 3 of the Code of State Regulations (60 CSR 3), "Voluntary Remediation And Redevelopment Rule," effective May 1, 2012.

EPA has reviewed the Voluntary Remediation Program that was in effect in 2008, and in a letter to WVDEP dated August 21, 2008, EPA identified areas where the VRP standards are potentially inconsistent with EPA corrective action requirements and guidance documents. However, EPA agrees to allow the use of the VRP standards to the extent that the requirements of the VRP are consistent with and no less stringent than the federal corrective action requirements, and that completed cleanups are consistent with EPA goals. For those sites where EPA has determined that the application of VRP standards will not result in cleanups that are protective of the environment, West Virginia will use the appropriate EPA requirement to assure

that the cleanup will protect the environment.

This approval to allow the use of the cleanup standards of the VRP at RCRA corrective action sites and the Memorandum of Agreement (MOA) between the State and EPA do not alter the corrective action authorities granted to the State in 2003. The MOA sets forth more specific detail regarding how the State will implement corrective action at hazardous waste sites and clarifies the role of the VRP cleanup standards within the Corrective Action Program. However, no provision of the Voluntary Remediation and Redevelopment Act or regulations promulgated pursuant thereto relieves any person of the responsibility to comply with any otherwise applicable portion of the authorized hazardous waste program or prevents the State from exercising the full extent of its authority corresponding to the state program approval requirements found in 40 CFR 271.16 (“Requirements for enforcement authority”), in any matter.

H. Where Are the Revised West Virginia Rules Different From the Federal Rules?

1. Rules For Which West Virginia is Not Seeking Authorization

West Virginia is not seeking authorization for the following RCRA revisions that are found in 40 CFR as of June 16, 2010:

- a) West Virginia is not seeking authorization for, and has appropriately left authority with EPA, for non-delegable federal rules. Non-delegable federal rules address certain functions for which EPA must retain authority, including treatment standards variances at 40 CFR 268.44(a)-(g). At section 33-20-1.5.a, West Virginia excludes from its substitution of state terms, federal rules that cannot be delegated to the state. In some

cases, West Virginia also excludes non-delegable rules from its incorporation by reference. For example, at section 33-20-10.2, West Virginia excludes 40 CFR 268.44 from its incorporation by reference of 40 CFR part 268. EPA will continue to implement these requirements as appropriate.

- b) In its hazardous waste management rules at 33 CSR 20 effective June 16, 2011, West Virginia has incorporated by reference the Uniform Hazardous Waste Manifest final rules (70 FR 10776; 3/04/05 as amended June 16, 2005 at 70 FR 35034; Revision Checklist 207). However, the West Virginia Public Service Commission rules at 150 CSR 11, effective December 24, 2002, and the WV Department of Transportation regulations at 157 CSR 7, effective April 17, 2012, do not contain analogs to some of the 40 CFR part 263 requirements for transporters that were revised by the March 4, 2005 and June 16, 2005 final rules.
- c) At §33-20-11.1, West Virginia has incorporated by reference 40 CFR part 267, as introduced by the September 8, 2005 final rule addressing Standardized Permits for RCRA Hazardous Waste Management Facilities (70 FR 53420-53478, Revision Checklist 210). However, West Virginia is not being authorized for this final rule because after reviewing the state's regulations, EPA found that West Virginia has not correctly adopted all of the revisions introduced by the Standardized Permit rule.
- d) West Virginia is not seeking authorization for the National Environmental Performance Track Program (4/22/04, 69 FR 21737; as amended 10/25/04, 69 FR 62217; Revision Checklist 204). On March 16, 2009, EPA announced its intention to halt and review the National Performance Track Program.

2. More Stringent West Virginia Rules

The West Virginia hazardous waste program contains some provisions that are more stringent than is required by the RCRA program as codified in the June 16, 2010 edition of title 40 of the Code of Federal Regulations (CFR). These more stringent provisions are being recognized as a part of the Federally-authorized program. The specific more stringent provisions are also noted in West Virginia's authorization application. They include, but are not limited to, the following:

- a) At §33-20-3.1.a, West Virginia requires the owner and operator to comply with additional requirements beyond the Federal requirements in order for a mixture of waste and one or more hazardous wastes identified in 40 CFR 261.3(a)(2)(iv) to be exempt from the definition of hazardous waste. This makes the State more stringent.
- b) At §33-20-5.4 and 33-20-5.5, West Virginia is more stringent because the state requires copies of all documents sent to EPA in compliance with 40 CFR parts 262 Subparts E and H, to also be sent to the state.
- c) At §33-20-7.3 and 33-20-8.2, West Virginia is more stringent in that the State requires that the notification sent to EPA in compliance with 40 CFR 264.12(a) and 265.12(a), also be sent to the state.

I. Who Handles Permits After This Authorization Takes Effect?

After this authorization revision, West Virginia will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer

any RCRA hazardous waste permits or portions of permits that we issued prior to the effective date of this authorization. Until such time as formal transfer of EPA permit responsibility to West Virginia occurs and EPA terminates its permit, EPA and West Virginia agree to coordinate the administration of permits in order to maintain consistency. We will not issue any more new permits or new portions of permits for the provisions listed in Section G after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which West Virginia is not yet authorized.

J. How Does This Action Affect Indian Country (18 U.S.C. 115) in West Virginia?

West Virginia is not seeking authorization to operate the program on Indian lands, since there are no Federally-recognized Indian lands in West Virginia.

K. What Is Codification and Is EPA Codifying West Virginia's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart XX, for this authorization of West Virginia's program revisions until a later date.

L. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). For the same reason, this action would not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). In any case, Executive Order 13175 does not apply to this rule since there are no Federally recognized tribes in the State of West Virginia.

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks that may

disproportionately affect children. This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 3701, et seq.) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 18, 1988) by examining the takings implications of the rule in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the

rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a ``major rule" as defined by 5 U.S.C. 804(2); this action will be effective **[insert date 60 days after publication in the Federal Register]**.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: November 1, 2013

Shawn M. Garvin
Regional Administrator, EPA Region III

BILLING CODE 6560-50-P